



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2003

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2003-7438

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188829.

The Texas Health and Human Services Commission (the "commission") received two requests for information relating to a specific report. In the first request, the requestor seeks all information relating to a specific April 20, 1998 Revised Joint Report (the "revised report"). In her second request, she seeks information contained in the revised report that pertains to a specific physician and pharmacy. You indicate that the commission maintains two documents that are responsive to this request: the revised report and a March 9, 1998 Joint Report (the "joint report"). You state that the joint report contains the names of Medicaid vendors and facilities that were referred to the Medicaid Fraud Control Unit (the "MFCU") of the Office of the Attorney General (the "OAG") for suspected fraud and abuse. You further state that the revised report does not contain this information, but instead identifies these vendors and facilities by reference to a tracking number that corresponds to the "Vendor/Facility ID#" on the joint report. In your original request for ruling, the commission sought to withhold both reports from disclosure under section 552.108 of the Government Code. You indicate now that the commission has released all information contained in the joint report with the exception of the "Vendor/Facility Names" and "Vendor/Facility ID#s" for open investigative cases. You also indicate that a copy of the

revised report was released to the requestor in its entirety by the OAG.¹ Accordingly, this ruling only addresses the two categories of information that remain at issue: the "Vendor/Facility Names" and "Vendor/Facility ID#s" for open investigative cases. You continue to assert that these two categories of information are excepted from disclosure under section 552.108. We have considered the exception you claim and have reviewed the information at issue. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments explaining why requested information should or should not be released).

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that a non-law enforcement agency may assert section 552.108 on behalf of a law enforcement agency for information that relates to possible criminal conduct that the non-law enforcement agency intends to forward to the law enforcement agency for investigation. *See* Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 474 (1987), 372 (1983) (stating that where incident involving allegedly criminal conduct is still under active investigation or prosecution, Gov't Code § 552.108 may be invoked by any proper custodian of information which relates to incident). In those instances where the non-law enforcement agency has already transferred the information to the law enforcement entity, this office requires a representation from that law enforcement entity that the release of the requested information would interfere with its law enforcement interests.

You state that the two categories of information pertain to complaints referred to MFCU for criminal investigation. You explain that four of these complaints are being investigated by MFCU while the remaining twenty have been referred back to the commission. You state that if the commission uncovers additional information sufficient to warrant referral of these twenty cases back to MFCU, the commission intends to make those referrals. Since you indicate that these complaints have all at some point been transferred to the MFCU for investigation, this office requires an affirmative representation from the OAG that it seeks to withhold this information under section 552.108. In your original request for ruling, the commission submitted a letter from the OAG indicating that agency's desire to withhold information contained in the reports under section 552.108. As previously noted, the OAG has subsequently released the revised report, which contains information relating to all of the open cases. Furthermore, we have not received any additional arguments from the OAG asserting that the release of the "Vendor/Facility Names" and "Vendor/Facility ID#s" will harm its law enforcement interests. Since we have received no indication that a law

¹The requestor also submitted a request to the OAG for a copy of the revised report. In its request for a ruling, the OAG asserted that the revised report was excepted from disclosure under section 552.108. The OAG subsequently withdrew its request for a ruling and released the revised report in its entirety.

enforcement entity seeks to withhold this information under section 552.108, we conclude that the commission must release the "Vendor/Facility Names" and "Vendor/Facility ID#s" to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

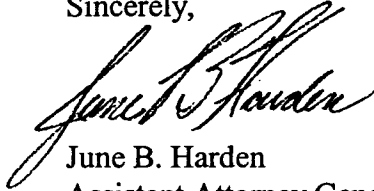
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 188829

Enc: Submitted documents

c: Ms. Donna Ressler
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Dallas, Texas 75202
(w/o enclosures)